

APPENDIX B
Memorandum of Agreement



Preserving America's Heritage

November 15, 2011

Ms. Margaret L. Goodro
Field Manager
Bureau of Land Management
El Centro Field Office
1661 South 4th Street
El Centro, CA 92243

*Ref: Tule Wind Project
San Diego County, California*

Dear Ms. Goodro:

Enclosed is the executed Memorandum of Agreement for the referenced project. By carrying out the terms of this Agreement, the Bureau of Land Management will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act.

Should you have any questions, please contact Nancy J. Brown, who can be reached at 202-606-8582 or nbrown@achp.gov.

Sincerely,

Caroline D. Hall
Assistant Director
Federal Property Management Section
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF LAND MANAGEMENT-CALIFORNIA,
THE DEPARTMENT OF ENERGY,
THE BUREAU OF INDIAN AFFAIRS,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
THE EWIIAAPAYP BAND OF KUMEYAAY INDIANS,
TULE WIND, LLC,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE TULE WIND ENERGY PROJECT
SAN DIEGO COUNTY, CALIFORNIA**

WHEREAS, Tule Wind, LLC (Applicant), has applied for a right-of-way (ROW) grant on public lands managed by the Bureau of Land Management (BLM) and has submitted a plan of development to construct, operate and maintain a wind turbine electrical energy generation plant on federal and non-federal lands and a 138 kilovolt (kV) transmission line across federal lands, including construction of access and maintenance roads, meteorological testing towers, a substation and energy collecting facility, laydown and staging areas, and support facilities and infrastructure (hereinafter, the "Project"); and

WHEREAS, the BLM has determined that the issuance of a ROW (proposed federal action) to the Applicant in accordance with the Federal Land Policy and Management Act (FLPMA) (Pub. L. 940-579; 43 U.S.C 1701) and authorization of the Project is an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), and its implementing regulations under 36 C.F.R. Part 800 (2004); and

WHEREAS, the U.S. Department of Energy (DOE) may also have Section 106 responsibilities since it may have a separate federal action in support of the undertaking that is subject to Section 106 of the NHPA, and therefore has participated in consultation and is an Invited Signatory to this Memorandum of Agreement (Agreement); and

WHEREAS, the Bureau of Indian Affairs, Pacific Regional Office (BIA) may also have Section 106 responsibilities since it may approve a Master Lease (proposed federal action) pursuant to 25 C.F.R. 162 (Leasing and Permitting) on lands held in federal trust status for the benefit of the Ewiiapaayp Band of Kumeyaay Indians which is an undertaking subject to Section 106 of the NHPA, and therefore has participated in consultation and is an Signatory to this Agreement; and

WHEREAS, the United States Army Corps of Engineers (COE) may also have Section 106 responsibilities since it may issue a Department of the Army (DA) permit pursuant to Section 404 of the Clean Water Act (proposed federal action) for discharges of dredged or fill material into jurisdictional waters of the United States associated with the Project, which is an undertaking subject to Section 106 of the NHPA, and therefore has participated in this consultation and is a Signatory to this Agreement; and

WHEREAS, the BLM is the lead federal agency for the undertaking as provided at 36 C.F.R. § 800.2(a)(2) fulfilling the collective responsibilities for complying with Section 106 on behalf of itself, DOE, BIA, and COE, and the BLM shall be responsible for managing historic properties within the area of potential effects (APE); and

WHEREAS, the BLM has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800 of the regulations implementing Section 106 of the NHPA; and

WHEREAS, in accordance with the regulations at 36 C.F.R. § 800.6(a)(1) BLM has notified the Advisory Council on Historic Preservation (ACHP) regarding the effects of alternatives of the undertaking on historic properties and has invited the ACHP to participate in consultation to resolve the potential effects on historic properties, and as per their letter dated March 10, 2010, the ACHP is participating in this consultation and is a Signatory to this Agreement (see 36 C.F.R. § 800.6(b)(2), "Resolution with Council Participation); and

WHEREAS, alternatives under consideration involve tribal reservation lands of the Ewiiapaayp Band of Kumeyaay Indians and the Tribe has been invited to consult on the undertaking and is a Signatory to this Agreement; and

WHEREAS, the California State Lands Commission (SLC) may authorize alternatives of the Project on State land and has certain responsibilities under State laws and regulations to take into account and mitigate the impacts on properties eligible for or included on the California Register of Historic Places and has participated in consultation and is invited to participate in this Agreement as a Concurring Party; and

WHEREAS, the California Public Utilities Commission (CPUC) is the lead State agency for compliance with the California Environmental Quality Act (CEQA) and has certain responsibilities under State laws and regulations to take into account and mitigate the impacts on properties eligible for or included on the California Register of Historic Places and has participated in consultation and is invited to participate in this Agreement as a Concurring Party; and

WHEREAS, the Applicant has participated in this consultation per 36 C.F.R. § 800.2(c)(4), will be the entity to whom the BLM may grant a ROW, and has the responsibility for carrying out the specific terms of this Agreement under the oversight of the BLM, and is an Invited Signatory to this Agreement; and

WHEREAS, the BLM has authorized the Applicant to conduct specific identification efforts for the undertaking including a review of the existing literature and records, cultural resources surveys, ethnographic studies, and geo-morphological studies to identify historic properties that might be located within the APE; and

WHEREAS, the reports *Class II and Class III Cultural Resources Inventory Report for the Tule Wind Project, McCain Valley, San Diego County, California* (Draft), prepared by ASM Affiliates, June 2010, and; *Addendum Class III Cultural Resources Inventory Report for the Tule*

Wind Project (Final), McCain Valley, San Diego County, California (Draft), prepared by ASM Affiliates, April 2011, and; *Archaeological Testing of Site CA-SDI-4788, Tule Wind Project, McCain Valley, San Diego County, California*, prepared by ASM Affiliates, August 2011, presents the results of identification and evaluation efforts; and

WHEREAS, through consultation with Indian tribes, the BLM has determined that alternatives are under consideration that would have an adverse effect on the geological landform known as Lost Valley Rock, or “wekatoekush,” to which Indian tribes attach religious or cultural significance, and the BLM has determined that this landform is locally significant and eligible for the National Register of Historic Places (NRHP) under Criterion A for its association with historical patterns or events significant to the cultural traditions of the community, and has consulted with the SHPO pursuant to 36 C.F.R. § 800.6 of the regulations implementing Section 106 of the NHPA; and

WHEREAS, the BLM will manage all archaeological sites within the APE as eligible for inclusion on the NRHP under Criterion D for project management purposes, and through the imposition of monitoring and avoidance measures, the BLM has found that the significant information values retained by these resources would not be affected by the undertaking; and

WHEREAS, pursuant to 36 C.F.R. § 800.2(c)(2)(ii) and Executive Order 13175, the BLM is responsible for government-to-government consultation with federally recognized Indian tribes and is the lead federal agency for all tribal consultation and coordination; and

WHEREAS, the BLM has formally notified and invited federally recognized tribes including the Barona Band of Diegueno Indians, Campo Band of Mission Indians, Ewiiapaayp Band of Kumeyaay Indians, Inaja-Cosmit Band of Mission Indians, Jamul Indian Village, La Posta Band of Kumeyaay Indians, Manzanita Band of Kumeyaay Indians, Mesa Grande Band of Mission Indians, San Pasqual Band of Diegueno Indians, Santa Ysabel Band of Diegueno Indians Sycuan Band of Kumeyaay Nation, and Viejas Band of Kumeyaay Indians (Tribes) to consult on the undertaking and participate in this Agreement as a Concurring Party (see Appendix G: Tribal Consultation Record); and

WHEREAS, the BLM has invited the non-federally recognized tribe of the Kwaaymii Laguna Band of Indians (Tribal Organization) to consult on the undertaking and participate in this Agreement as a Concurring Party; and

WHEREAS, the BLM shall continue to consult with the Tribes throughout the implementation of this Agreement regarding effects to historic properties to which they attach religious and cultural significance. BLM will carry out its responsibilities to consult with Tribes that request such consultation with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this Agreement; and

NOW, THEREFORE, the BLM, COE, BIA, Ewiiapaayp Band of Kumeyaay Indians, SHPO, and ACHP (Signatories), and DOE and the Applicant (Invited Signatories), agree that the undertaking shall be implemented in accordance with the following stipulations in order to take

into account the adverse effect of the undertaking on historic properties, resolve such adverse effects through the process set forth in this Agreement, and provide the ACHP with a reasonable opportunity to comment in compliance with Section 106.

STIPULATIONS

The BLM shall ensure that the following measures are implemented:

I. DEFINITIONS

The definitions found at 36 C.F.R. § 800.16 and in Appendix A shall apply throughout this Agreement.

II. AREA OF POTENTIAL EFFECTS

The area of potential effects (APE) is depicted in Appendix B to this Agreement. Appendix B as set forth hereunder may be modified through consultation among the parties to this Agreement without amending the Agreement. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed and alternative project components under consideration as of the date of execution of this Agreement. If it is determined in the future that the undertaking may directly or indirectly affect historic properties located outside the currently defined APE, then the BLM, in consultation with SHPO and pursuant to 36 C.F.R. § 800.4(a)(1), shall determine and document modifications to the APE using the following process:

- a) Consulting parties to this Agreement may propose that the APE established herein be modified. If the Signatories and Invited Signatories decide that such modification requires an amendment of the Agreement, the BLM shall follow the procedures in Stipulation X.
- b) If the Signatories and Invited Signatories agree to the proposal, then the BLM will prepare a description and a map of the modification to which the Signatories and Invited Signatories agree. The BLM will keep copies of the description and the map on file for its administrative record and distribute copies of each to the other consulting parties within 30 days of the day upon which agreement was reached.
- c) Where modification to the APE adds a new geographic area, the BLM shall take the steps necessary to identify, evaluate and take into account the effects of the undertaking on historic properties in the new geographic area in accordance with this Agreement.

III. AVOIDANCE, PROTECTIVE MEASURES AND TREATMENT PLANS

The BLM will continue to seek and analyze alternatives that avoid adverse effects to cultural resources.

- a) Where archaeological resources can be avoided, the BLM will implement the management or protective measures identified in Table 1 of Appendix C and the following:
 - i. Archaeological sites that can be protected from direct impacts, but are within 100 feet, including buffer areas, of proposed construction activities will be identified and labeled as Environmentally Sensitive Areas (ESAs). This includes archaeological sites determined eligible for inclusion in the NRHP and sites that have not been formally evaluated, but are being treated as eligible and avoided for project management purposes.
 - ii. The ESAs will be designated by marking the boundaries of sites with appropriate buffer zones (generally a buffer of 50 feet beyond the outer limits of the site extent, as demonstrated by surface and/or subsurface indications) using temporary fencing or other easily recognizable boundary defining materials.
 - (1) These areas will be shown on the engineering plans for the Project as off-limits to construction activities.
 - (2) Once established, an ESA will define areas where construction activities cannot occur to prevent damage to historic properties within the designated ESA.
 - iii. ESAs will be identified and established prior to initiation of ground disturbing activities and will be maintained and monitored for the duration of the work effort in the ESA vicinity.
- b) Approval of any alternative other than the No Action/No Project alternative would adversely affect the geological landform referred to as the Lost Valley Rock and the BLM will mitigate the adverse effect as follows:
 - i. The BLM shall develop a draft historic property treatment plan (HPTP) in consultation with consulting parties to this Agreement. The Applicant will be responsible for implementing all provisions of the HPTP.
 - (1) Consultation on the draft HPTP will follow the procedures in Stipulation VII(a).
 - (2) If the HPTP has not been finalized by the date of execution of this Agreement, the BLM shall continue consultation on the HPTP. If the HPTP has not been finalized by the date of the Record of Decision (ROD), the BLM may submit the HPTP to consulting parties for review as provided in Stipulation VII(a). A consulting party may provide any comments directly to SHPO with a copy to the BLM within the 30-day comment period. The BLM will forward to the other Signatories and Invited Signatories all comments regarding the HPTP received during the comment period. The BLM shall submit the revised HPTP to all consulting parties for a final, 15 day review period. BLM will consider any timely comments in finalizing the HPTP. The final HPTP will be made Appendix D to this Agreement.
 - ii. The HPTP will finalize and provide expanded detail on mitigation measures to resolve adverse effects. The Applicant will implement the following mitigation measures in accordance with the stipulations of the final HPTP:

- (1) The Applicant will provide funding for the following measures:
 - a. An ethnographic study to identify and document historic properties, including regional trails mapping, in the McCain Valley that are of religious or cultural significance, or are considered traditional cultural properties, by Indian tribes and tribal organizations.
 - b. To support and enhance public education and interpretation programs at a museum (including, but not limited to, support in the form of funding for one or more interns to inventory and update museum collections and/or develop an interpretive archeological exhibit of traveling display).
 - c. To support language preservation initiatives for the Kumeyaay tribes.
 - (2) The Applicant will prepare a nomination to the NRHP for the archaeological resources that may comprise a proposed McCain Valley Discontiguous Archeological District (District). A consultant, under contract to the Applicant, will review the current reports and site records prepared as part of the current undertaking as well as all earlier documentation on the cultural resources within McCain Valley. Preparation of the nomination form may require additional fieldwork to conduct archaeological ground-truthing of resources that may comprise the District and/or utilization of the ethnographic information prepared under (1) above. The consultant shall submit a draft nomination form to the BLM utilizing information gathered as result of the undertaking or any other relevant data gathered as part of a previous undertaking. The BLM will review the draft nomination form and submit comments to the consultant. Upon acceptance, the BLM will submit the draft nomination form to SHPO for review and comment. The BLM will revise the nomination form in response to SHPO comments and will submit the final nomination package to the SHPO and the Keeper of the NRHP. Should the Keeper of the NRHP request revisions to the nomination, the Applicant and the consultant will work with the BLM to complete the requested changes.
 - (3) The BLM and the Applicant, in consultation with the appropriate land owner(s) and within the limits of agency authority, will identify and implement resource protection measures during the period of construction, such as fencing, gating, and law enforcement patrols, to stabilize and/or protect cultural resources within the McCain Valley during the construction. Where continuing resource protection measures are considered appropriate after the period of construction, such measures will be developed as provided in Stipulation IV(c).
 - (4) To minimize effects to the significant values of Lost Valley Rock, the Applicant will relocate the 138kv transmission line (and/or overhead cable collection line) to the east side of Lost Valley Rock.
- iii. Should the undertaking be approved by the BLM, the HPTP will be implemented after the ROW is granted by the BLM and the DA permit is issued by the COE, and prior to the issuance of a Notice to Proceed for construction in those portions of the undertaking addressed by the HPTP.

- iv. Within thirty (30) days after the BLM has determined that all work required by HPTP has been completed, the BLM shall notify and submit a summary report to the consulting parties. Within twelve (12) months after BLM has determined that all work required by HPTP has been completed, or pursuant to an alternative schedule required by any HPTP implementing the requirements of this Agreement, the Applicant will submit a written draft technical report to the BLM that documents the results of implementing the HPTP. The BLM will provide the draft technical report to consulting parties for review as provided in Stipulation VII(a).
- v. Copies of the final technical report documenting the results of implementing the requirements of the HPTP will be distributed by BLM to the consulting parties and to the appropriate California Historical Resources Information Survey (CHRIS) Regional Information Center.

IV. MONITORING

a) Archaeological Monitoring

- i. The Applicant, in consultation with the other consulting parties to this Agreement, may develop a comprehensive archaeological monitoring plan. A comprehensive archaeological monitoring plan that has been approved by the Signatories and Invited Signatories shall take precedence over those stipulations provided below. A draft comprehensive archaeological monitoring plan may be incorporated into the plan for post-review discoveries and unanticipated effects and is attached as Appendix F to this Agreement. In the absence of a comprehensive archaeological monitoring plan, Paragraphs 1 – 4 of this stipulation shall apply.
 - (1) The Applicant shall ensure that archaeological monitors will be on site during construction to observe grading, trenching or other ground disturbing activities for any facilities, roads or other project components related to the undertaking near ESAs and in other areas designated for full-time monitoring, as detailed in Stipulation III, Appendix C, and/or Appendix E.
 - (2) The Applicant shall ensure that archaeological monitors will meet the standards specified in Stipulation VIII(a), will be approved and permitted by the BLM, will be familiar with the types of historic and prehistoric archaeological resources that may occur in the APE, and will be directly supervised by a principal archaeologist (PA).
 - (3) The Applicant shall ensure that the PA will submit bi-weekly documentation of archaeological monitoring activities to the BLM by email. Documentation will include the location of archaeological monitoring activities for the reporting time period, as well as a description of any archaeological resources identified and any actions taken. The PA will prepare a monthly field monitoring verification report with the compiled monitoring observations, results, and actions taken for

submission and approval to the BLM. The BLM will provide copies of biweekly and monthly archaeological monitoring reports to the consulting parties, unless otherwise directed by a consulting party.

- (4) Upon completion of all archaeological monitoring tasks and requirements implemented pursuant to this Agreement, the Applicant shall ensure that the PA will submit within three months a final monitoring report to the BLM for review and approval. The final monitoring report will describe the monitoring program and its findings and results, and present a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction. The BLM will provide a copy of the monitoring report to the consulting parties.

b) Tribal Participation Plan

- i. To facilitate continued tribal consultation for this undertaking, in consultation with the BLM, the Applicant and interested Tribes will develop and implement a tribal participation plan. This plan will afford representatives designated by Tribes (tribal cultural consultants) the opportunity to monitor and be on site during construction to observe grading, trenching or ground disturbing activities for facilities, roads or other activities near ESAs and in other areas designated for monitoring as detailed in Appendix C and/or F.
 - (1) In consultation with the BLM, the Applicant will contact and identify Tribes who want to participate in the development and implementation of the plan.
 - (2) The Applicant will develop a draft framework for the tribal participation plan and submit it to the BLM and the participating tribes.
 - (3) The tribal participation plan will describe the role of all parties in the program, specify the terms, expectations, notifications, reports, training, or deliverables to be provided, and include a specific procedure to be followed in the event that a tribal cultural consultant is not provided or is not available.
 - (4) Tribal cultural consultants will be individuals designated by the Tribes and will report to the PA.
 - (5) Tribal cultural consultants are to submit documentation of tribal monitoring activities to the Tribes and to the PA. The PA is to submit the documentation to the BLM, or other consulting parties on request, in accordance with the terms of the tribal participation program.
 - (6) The tribal participation plan will be finalized and implemented prior to the start of ground-disturbing activities in areas designated for monitoring and consistent with the provisions of Stipulation IX (Implementation of the Undertaking).

c) Long Term Management Plan

The Applicant, in consultation with the other consulting parties to this Agreement, will establish and fund a Long Term Management Plan (LTMP) for the post-construction archaeological monitoring, and condition assessment of sites in the APE which could be affected by on-going

operations and maintenance activities, and law enforcement patrols as provided in Stipulation III(b)(ii)(3). The Applicant shall submit a draft LTMP to the BLM within 9 months from the date of the issuance of the Notice to Proceed for the undertaking. The BLM will submit the LTMP to the consulting parties for review following the provisions of Stipulation VII(a). The LTMP will be made Appendix E to this Agreement.

V. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

The Applicant, in consultation with the other consulting parties to this Agreement, shall develop a comprehensive plan to manage post-review discoveries and unanticipated effects which shall be attached as Appendix F to this Agreement.

- a) Where an HPTP is prepared pursuant to this Agreement, the plan to manage post-review discoveries and unanticipated effects may be provided in the HPTP.
- b) If human remains and/or associated funerary objects compose all or part of the discovery, then the BLM shall follow the process described in Stipulation VI.
- c) The BLM at its discretion, but in consultation with SHPO, may treat any discovered property as eligible for inclusion in the NRHP for project management purposes pursuant to 36 C.F.R. § 800.13(c).

VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

- a) The BLM shall ensure that any Native American burials and related items discovered on BLM administered lands during implementation of the terms of the Agreement will be treated in accordance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (Pub. L. 101-601).
- b) The BLM shall ensure that Native American burials and related cultural items on non-federal lands are treated in accordance with the applicable requirements of the California Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health and Human Safety Code at Section 7050.5(c).

VII. COMMUNICATION AND REPORTING

- a) BLM shall submit all documents relating to the Agreement to the consulting parties in complete but draft form for review. Consulting parties will be afforded 30 days following receipt of a draft document to submit written comments to BLM unless otherwise mutually agreed to by the consulting parties. The BLM will provide consulting parties with written documentation indicating whether and how the document will be modified in response to comments. Unless consulting parties object to the revisions in writing to the BLM within 30 days following receipt of the revised document, BLM may finalize the document.

- i. If a consulting party objects to the revisions during the comment period, the BLM will consult with the objecting party for no more than 30 days to resolve the objection. If the objection is resolved, the BLM will notify consulting parties of the resolution and may revise and finalize the document. If the objection cannot be resolved, the BLM shall follow the procedures in Stipulation XI(c).
 - ii. The BLM will provide a copy of the final document to the consulting parties.
- b) The BLM shall prepare a letter report on a biennial schedule summarizing the fulfillment of the stipulations contained within this Agreement. The report will be submitted to all consulting parties to this Agreement by December 31, 2013, for the initial reporting period and every two years thereafter for the duration of this Agreement.
- i. The implementation and operation of this Agreement shall be evaluated on a biennial basis by the parties. This evaluation, to be conducted after the receipt of the BLM letter report, may include in-person meetings or conference calls among these parties, and may provide suggestions for modifications or amendments.
 - ii. During the construction phase of the undertaking, the consulting parties will meet annually between January and March to discuss the fulfillment of the stipulations contained within this Agreement.

VIII. ADMINISTRATIVE STANDARDS

- a) **PROFESSIONAL QUALIFICATION STANDARDS.** All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is supervised by someone who meets the PQS. Indian tribes have the sole authority to certify and approve tribal cultural consultants who may participate in activities in support of implementation of this Agreement.
- b) **DOCUMENTATION STANDARDS.** Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a) December 1989, Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports, and any specific and applicable county or local requirements or report formats.

- c) **CURATION STANDARDS.** On BLM-administered land, all records and materials resulting from the actions required by this Agreement shall be curated in accordance with 36 C.F.R. Part 79, and the provisions of the NAGPRA, 43 C.F.R. Part 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the actions required by this Agreement for private lands shall be curated in accordance with 36 C.F.R. Part 79. The BLM will seek to have the materials retrieved from private lands donated through a written donation agreement. The BLM will attempt to have all collections curated at the Imperial Valley Desert Museum where possible unless otherwise agreed to by the consulting parties.

IX. IMPLEMENTATION OF THE UNDERTAKING

- a) The BLM may authorize construction activities, including but not limited to those listed below, to proceed in specific geographic areas where there are no historic properties; where there will be no adverse effect to historic properties; where an archaeological monitoring and post-review discovery process or plan is in place per Stipulation IV and V, or in areas where an HPTP has been approved, initiated and field work completed. Such construction activities may include:
 - i. demarcation, set up, and use of staging areas for construction of the undertaking,
 - ii. conduct of geotechnical boring investigations or other geophysical and engineering activities, and
 - iii. grading, constructing buildings, and installing wind turbines.
 - iv. construction of transmission towers
- b) Initiation of any construction activities on federal lands shall not occur until after the BLM issues the Record of Decision, ROW grant, and Notice(s) to Proceed. Construction shall not occur in waters of the United States on or off federal lands until the COE issues the DA permit.

X. AMENDMENTS TO THE AGREEMENT

This Agreement may be amended only upon written agreement of the Signatories and Invited Signatories.

- a) Upon receipt of a request to amend this Agreement, the BLM will immediately notify the other consulting parties and initiate a 30 day period to consult on the proposed amendment, whereupon all parties shall consult to consider such amendments.
- b) If agreement to the amendment cannot be reached within the 30 day period, resolution of the issue may proceed by following the dispute resolution process in Stipulation XI.
- c) Amendments to this Agreement shall take effect on the dates that they are fully executed by the Signatories and Invited Signatories.

- d) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the consulting parties do not require the Agreement to be amended.
- e) The terms of this Agreement are a condition of the ROD and the ROW grant that the BLM may issue and are binding on the Applicant. For purposes of this Agreement, changes in the corporate name of the Applicant or reassignment of the ROW to a subsidiary company or other entity may be authorized by the BLM and does not require the Agreement to be amended.

XI. DISPUTE RESOLUTION

- a) Should the Signatories or Invited Signatories object at any time to the manner in which the terms of this Agreement are implemented, the BLM will immediately notify the other Signatories and Invited Signatories and consult for no more than 30 days to resolve the objection.
- b) If the objection can be resolved within the consultation period, the BLM may authorize the disputed action to proceed in accordance with the terms of such resolution.
- c) If the objection cannot be resolved through such consultation, the BLM will forward all documentation relevant to the objection to the ACHP with copies to the consulting parties to the Agreement. Any comments provided by the ACHP within 30 days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. The BLM will notify consulting parties in writing of its final decision within 14 days after it is rendered.
- d) The BLM's responsibility to carry out all other actions under this Agreement that are not the subject of the objection will remain unchanged.
- e) At any time during implementation of the terms of this Agreement, should an objection pertaining to the Agreement be raised by a Concurring Party or a member of the interested public, the BLM shall immediately notify the consulting parties, consult with the SHPO about the objection, and take the objection into account. The other consulting parties may comment on the objection to the BLM. The BLM shall consult with the objecting party for no more than 30 days. Within 14 days following closure of consultation, the BLM will render a final decision regarding the objection and proceed accordingly after notifying all parties of its decision in writing. In reaching its final decision, the BLM will take into account all comments from the parties regarding the objection.

XII. TERMINATION

- a) If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to amend this Agreement in accordance with Stipulation X above. If within sixty (60) days

resolution regarding an amendment has not been reached, a Signatory or Invited Signatory may terminate the Agreement upon 10 days' written notification to the other Signatories and Invited Signatories. Following written notification, the terminating Signatory or Invited Signatory will inform the Concurring parties and Tribes.

- b) If the Agreement is terminated, and prior to work continuing on the undertaking, the BLM, COE, DOE and BIA shall either (a) execute a new Agreement pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. Each party shall notify the other parties to the Agreement as to the course of action that it will pursue.

XIII. ADDITION/WITHDRAWAL OF PARTIES TO/FROM THE AGREEMENT

- a) Should conditions of the undertaking change such that other federal agencies, state agencies, Indian tribes, tribal organizations or other organizations or individuals not already party to this Agreement request in writing to participate, the BLM will notify the consulting parties and consider the request to participate in the Agreement. Should the BLM agree to the request to participate, the Agreement shall be amended following the procedures in Stipulation X.
- b) In the event that the Applicant applies for additional federal funding or other federal approvals, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this Agreement and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation X.
- c) Should a Concurring Party determine that its participation in this Agreement is no longer warranted, the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Concurring Party to the Agreement does not require an amendment of the Agreement.

XIV. DURATION OF THIS AGREEMENT

- a) This Agreement will expire if construction has not been initiated and the BLM ROW grant expires or is withdrawn, or the stipulations of this Agreement have not been initiated, within five (5) years from the date of execution. Prior to such time, the BLM may consult with the other Signatories and Invited Signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation X above.
- b) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement executed for the undertaking supersedes it, or the undertaking itself has been terminated, this Agreement will remain in full force and effect for the 30-year term of the ROW or until BLM, in consultation with the other Signatories and Invited Signatories, determines that implementation of all aspects of the undertaking has been completed and that all terms of this have been fulfilled in a satisfactory manner. The effective period of this Agreement may be extended as provided in Stipulation X. Upon a determination by BLM

that implementation of all aspects of the undertaking have been completed and that all terms of this Agreement have been fulfilled in a satisfactory manner, BLM will notify the parties to this Agreement in writing of the agency's determination. This Agreement will terminate and have no further force or effect 30 days after BLM so notifies the consulting parties to this Agreement, unless BLM retracts its determination before the end of that period.


XV. EFFECTIVE DATE

- a) This Agreement and any amendments shall take effect on the date that it has been fully executed by the Signatories.
- b) Execution and implementation of this Agreement is evidence that the BLM, the BIA, the DOE, and the COE have taken into account the effect of the undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and that the BLM, the BIA, the DOE, and the COE have satisfied their responsibilities under Section 106. The BLM shall be responsible for managing historic properties within the APE for the undertaking pursuant to the NHPA. The Signatories and Invited Signatories to this Agreement represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

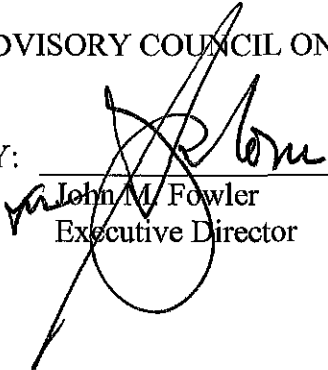
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SIGNATORY PARTIES

CALIFORNIA STATE HISTORIC PRESERVATION OFFICE

BY:  DATE: 09 Nov. 2011
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:  DATE: Nov. 16, 2011
John M. Fowler
Executive Director

SIGNATORY PARTIES

U.S. BUREAU OF LAND MANAGEMENT

BY: Margaret L. Goodro DATE: 11-7-11
Margaret L. Goodro
Field Manager, El Centro Field Office

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

BY: David J. Castanon DATE: 11-7-11
David J. Castanon
Chief, Regulatory Division

BUREAU OF INDIAN AFFAIRS

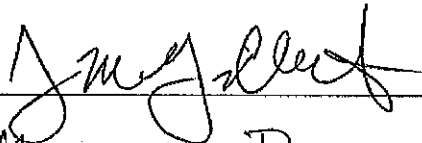
BY: Amy Dutschke DATE: 11/8/11
Amy Dutschke
Regional Director, Pacific Region

EWIIAAPAYP BAND OF KUMEYAAY INDIANS

BY: Robert Ponto Sr DATE: 11-7-11
TITLE: Chairman

INVITED SIGNATORY PARTY

TULE WIND, LLC

BY:  DATE: 11-15-11

TITLE: MANAGING DIRECTOR